IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 553 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DANABHAI VIRABHAI RABARI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 553 of 2002
MR MEHUL H RATHOD for appellant
MR KT DAVE, ADDL.PUBLIC PROSECUTOR for Respondent

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 28/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated March 11, 2002, rendered by the learned Special Judge and Additional Sessions Judge, Banaskantha at Deesa, in Special Case No.75 of 2000, by which the appellant is convicted of the offences punishable under Sections 17, 18 read with Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, and sentenced to suffer R.I. for five years and fine of Rs.35,000/-, in default, R.I. for one year, for possessing 920 grams of opium without pass or permit, as well as R.I. for ten years and fine of Rs.1 Lac, in default, R.I. for one year, for having committed offences punishable under Sections 17, 18 read with Section 29 of the N.D.P.S.Act.

2. At the time of hearing of the appeal, Mr. Mehul H.Rathod, learned counsel of the appellant, has stated at the Bar that the sole appellant has expired on March 22, 2004 and prayed that the appeal be disposed of as having abated in terms of Section 394 of the Code of Criminal Procedure, 1973.

3. Mr.K.T.Dave, learned Additional Public Prosecutor, has produced xerox copy of jail remarks sheet of the appellant forwarded to him by Deputy Superintendent, Central Jail, Ahmedabad, which indicates that the appellant expired on March 22, 2004 at 23.05 hours in Civil Hospital during treatment. Xerox copy of jail remarks sheet of deceased appellant is ordered to be taken on record of the appeal. Sub-section(1) of Section 394 provides that every appeal under Section 377 or Section 378 shall finally abate on the death of the accused; whereas sub-section(2) of Section 394 provides that every other appeal under Chapter-XXIX, except an appeal from a sentence of fine, shall finally abate on the death of the appellant. Instant appeal having been filed under Section 374 of the Code would abate in terms of Section 394(2) of the Code. It is relevant to notice that the near relatives of deceased appellant have not applied to this appellate Court within 30 days of death of the appellant for leave to continue the appeal. Under the circumstances, the appeal shall have to be disposed of as having abated. Accordingly, it is held that instant appeal has finally abated on the death of the appellant on March 22, 2004 and stands disposed of accordingly.

(J.M.Panchal,J.)

( M.R.Shah,J.)

(patel)